

Title	Probate Rule Concerning the Personal Representative's Duty to Reimburse Unsuccessful First-Filer for a Portion of the Graduated Filing Fee (rule 7.151 in Title 7 of the California Rules of Court, adopted effective January 1, 2004).
Summary	Rule 7.151, adopted effective January 1, 2004, implements the obligation imposed by statute on personal representatives appointed on a later-filed petition for probate to reimburse the party that filed the first petition for probate in the proceeding for part of the filing fee paid by that party. Because the rule was accepted on an urgent basis, without public comments, comments are now being sought to determine whether amendments should be made to this rule.
Source	Probate and Mental Health Advisory Committee, Hon. Thomas W. Stoevers, Chair
Staff	Douglas C. Miller, Committee Counsel, 415.865.7535, douglas.miller@jud.ca.gov
Discussion	<p>Government Code section 26827, as amended by legislation effective for decedents' estates commenced on or after August 18, 2003, provides for a graduated filing fee based on the estimated value of the estate's assets.<sup>1</sup> The minimum fee under the statute is \$185 for estates valued at less than \$250,000. Thereafter the filing fee increases in stages from \$250 for estates valued at \$250,000 to \$3,500 for estates valued at \$3.5 million, plus an additional percentage of the value over that sum.</p> <p>Section 26827 as amended imposes the new graduated filing fee only on the party that files the first petition seeking appointment of a personal representative. Other parties that file competing petitions thereafter are obligated to pay only the minimum fee.<sup>2</sup></p>

<sup>1</sup> Stats.2003, ch. 159, §§ 9, 27 (AB 1759). A decedent's estate proceeding is commenced by filing a petition for probate, a petition that requests the court to appoint a personal representative of the estate. (See Prob. Code, §§ 58, 8000.) The amendment to section 26827 became effective on Sunday, August 17, 2003. Therefore, the first day a decedent's estate proceeding subject to the graduated filing fee could be commenced was Monday, August 18, 2003.

<sup>2</sup> See Government Code section 26827(d). A challenge to the appointment of a personal representative may take the form of objections to a particular appointment. However, if the challenger asserts the right of a different person to be appointed, the challenger must file another petition for probate. (Prob. Code, § 8004(a).)

Section 26827, when it was originally amended to establish a graduated filing fee, made no provision for the situation where the personal representative of the estate is appointed on a petition that was not subject to the graduated filing fee because it was not the first petition filed. In this situation, the appointed personal representative gains access to the assets of the estate on which the graduated filing fee was based although another party paid that fee. The disappointed first-filer loses the opportunity to be reimbursed from the estate for the graduated filing fee.

In part to address this problem, Section 26827 was amended again by AB 296, signed by the governor on October 10, 2003. That legislation will become effective on January 1, 2004.<sup>3</sup>

Section 26827(d), as amended by AB 296, provides that a general personal representative appointed on a subsequent petition must reimburse the unsuccessful first-filer for the graduated filing fee paid in excess of the minimum under section 26827, less any unpaid costs awarded to the successful petitioner against the unsuccessful first-filer, “under rules adopted by the Judicial Council.” Rule 7.151 is the Judicial Council’s response to this statutory direction.

Rule 7.151 has already been adopted by the council, effective January 1, 2004. The rule was not circulated for public comment before its adoption because of the need to adopt the rule effective no later than the date AB 296 is effective and before any final accounts and petitions for final distribution are filed in decedents’ estates subject to the graduated filing fee. A final account could be filed in an estate commenced on August 18, 2003 as early as five months later, in

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<sup>3</sup> Stats.2003, ch. 757, § 4 (AB 296). In addition to addressing the first-filer issue described above, AB 296 also clarifies that the graduated filing fee above the minimum is payable only by petitioners that file a first petition for the appointment of a *general* personal representative—an executor, an administrator with the will annexed, an administrator, or a special administrator with the powers of a general personal representative under Probate Code section 8545. A petitioner seeking appointment of a special administrator without general powers must pay only the minimum filing fee under section 26827.

<sup>4</sup> A petition for probate filed on August 18, 2003 would be set for hearing approximately one month after filing. A final account can be filed in an estate proceeding only when the estate is in a condition to be closed (Prob. Code, § 10951). The estate is not in a condition to be closed until the period of notice to creditors has passed, four months from the date Letters are issued to a general personal representative (Prob. Code, § 9100).

approximately mid-January of 2004.<sup>4</sup>

Public comment is now being sought on the rule. Improvements in rule 7.151 suggested by public commentators could be considered in time for the council to make any necessary amendments effective July 1, 2004.

Rule 7.151(b)(1) defines the reimbursement required by AB 296 as in the amount of the filing fee paid by the unsuccessful first-filer in excess of the filing fee that would have been payable on that date for a petition for probate of an estate valued at less than \$250,000. The minimum filing fee under Government Code section 26827 is applicable to estates valued at less than \$250,000.

Under rule 7.151(c), the reimbursement payment must be made in cash and in full no later than the date the Inventory and Appraisal is due under the Probate Code. By then, the personal representative should be able to collect assets of the estate that it may expend for the reimbursement payment under rule 7.151(d).

The unsuccessful first-filing petitioner must give a receipt for the reimbursement payment under rule 7.151(e). The receipt is important because rule 7.151(f) conditions the personal representative's right to apply for a refund of an overpayment of the filing fee under Government Code section 26827 and new rule 7.552 on the reimbursement payment.<sup>5</sup> The personal representative should attach the receipt as an exhibit to its final account as evidence of the reimbursement payment under new rule 7.552(b).<sup>6</sup>

Subdivision (g) of rule 7.151 also refers to rule 7.552. Rule 7.552(g) authorizes a refund of part of a graduated filing fee where a petition for probate is voluntarily dismissed. Rule 7.151(g) provides that if a petitioner is eligible for this refund under rule 7.552, it is not also eligible for reimbursement under rule 7.151.

The text of rule 7.151 is attached at pages 4–5.

A copy of the relevant portions of AB 296 is attached at pages 6–8.

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<sup>5</sup> Rule 7.552 is also effective on January 1, 2004.

<sup>6</sup> If the first-filer fails or refuses to give the receipt, the personal representative is authorized under rule 7.552(b) to provide other evidence of payment satisfactory to the court.

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Attachment

Rule 7.151 of title 7 of the California Rules of Court is adopted, effective January 1, 2004, to read:

**Rule 7.151. Reimbursement of graduated filing fee by successful subsequent petitioner**

**(a) [Duty to reimburse]** In decedents' estates commenced on or after August 18, 2003, a general personal representative appointed on a petition for probate that was not the first-filed petition for appointment of a general personal representative in the proceeding, must reimburse the unsuccessful petitioner on the first-filed petition for a portion of the filing fee paid by the unsuccessful petitioner.

**(b) [Amount of reimbursement]** The reimbursement required under this rule is in the amount of:

(1) The filing fee paid by the unsuccessful petitioner in excess of the filing fee that would have been payable on that date for a petition for probate of an estate valued at less than \$250,000.00, less

(2) The unpaid amount of any costs or sanctions awarded against the unsuccessful petitioner in favor of the party that sought the personal representative's appointment in the proceeding.

**(c) [When reimbursement payable]** The personal representative must make the reimbursement payment required under this rule in cash and in full no later than the date the Inventory and Appraisal is due under Probate Code section 8800(b), including additional time allowed by the court under that provision.

**(d) [Payment from estate funds]** The reimbursement payment under this rule is an authorized expense of administration and may be made from estate funds without a prior court order.

**(e) [Receipt from unsuccessful petitioner]** The unsuccessful petitioner must give its signed receipt for the reimbursement payment made under this rule.

1        **(f) [Personal representative's right to claim refund]** A personal  
2        representative that is required to but fails to make the reimbursement  
3        payment under this rule may not claim a refund of the difference  
4        between the estimated filing fee and the corrected filing fee under rule  
5        7.552(c).

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7        **(g) [Petitioner on dismissed petition for probate]** A petitioner that is  
8        eligible to receive a refund of filing fee for a dismissed petition for  
9        probate under rule 7.552(d) is not an unsuccessful petitioner within the  
10       meaning of this rule.

**Assembly Bill No. 296**

**CHAPTER 757**

An act to amend Sections 14612, 22825.01, 25350.8, 25350.85, 25350.10, 25350.105, 26826.4, 26827, 68086, 68933, and 69926.5 of, and to add and repeal Section 14612.2 of, the Government Code, to amend Section 62.5 of the Labor Code, to amend and repeal Section 6611 of the Public Contract Code, to amend Section 40433 of, and to repeal Section 40409 of, the Public Resources Code, to amend Section 97.68 of, and to add Section 97.46 to, the Revenue and Taxation Code, to amend Section 17604 of the Welfare and Institutions Code, and to amend Item 3910-001-0387 of Section 2.00 of Chapter 157 of the Statutes of 2003, relating to state and local government.

[Approved by Governor October 10, 2003.  
Filed with Secretary of State October 11, 2003.]

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The people of the State of California do enact as follows:

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SEC. 4. Section 26827 of the Government Code, as amended by Chapter 159 of the Statutes of 2003, is amended to read:

26827. (a) The total fee for filing the first petition for letters of administration or letters testamentary, or the first petition for special letters of administration with the powers of a general personal representative pursuant to Section 8545 of the Probate Code, or a first account of a testamentary trustee of a trust that is subject to the continuing jurisdiction of the court pursuant to Chapter 4 (commencing with Section 17300) of Part 5 of Division 9 of the Probate Code is, as follows:

(1) One hundred eighty-five dollars (\$185) for estates or trusts under two hundred fifty thousand dollars (\$250,000).

(2) Two hundred fifty dollars (\$250) for estates or trusts of at least two hundred fifty thousand dollars (\$250,000) and less than five hundred thousand dollars (\$500,000).

(3) Three hundred fifty dollars (\$350) for estates or trusts of at least five hundred thousand dollars (\$500,000) and less than seven hundred fifty thousand dollars (\$750,000).

(4) Five hundred dollars (\$500) for estates or trusts of at least seven hundred fifty thousand dollars (\$750,000) and less than one million dollars (\$1,000,000).

(5) One thousand dollars (\$1,000) for estates or trusts of at least one million dollars (\$1,000,000) and less than one million five hundred thousand dollars (\$1,500,000).

(6) Two thousand dollars (\$2,000) for estates or trusts of at least one million five hundred thousand dollars (\$1,500,000) and less than two million dollars (\$2,000,000).

(7) Two thousand five hundred dollars (\$2,500) for estates or trusts of at least two million dollars (\$2,000,000) and less than two million five hundred thousand dollars (\$2,500,000).

(8) Three thousand five hundred dollars (\$3,500) for estates or trusts of at least two million five hundred thousand dollars (\$2,500,000) and less than three million five hundred thousand dollars (\$3,500,000).

(9) Three thousand five hundred dollars (\$3,500) plus 0.2 percent of the amount over three million five hundred thousand dollars (\$3,500,000) for estates or trusts of three million five hundred thousand dollars (\$3,500,000) or more.

(b) The petitioner under subdivision (a) shall estimate the fair market value of the decedent's estate at the date of the decedent's death in the petition, without reference to encumbrances or other obligations on estate property. The filing fee shall be determined based on the estimate by the petitioner at the time the petition is filed. If the final appraised value of the decedent's estate would result in a filing fee different from the filing fee actually paid, an adjustment shall be made at the time of the final account, under rules adopted by the Judicial Council. The filing fee for a trustee under subdivision (a) shall be based on the value of the trust shown in the first account.

(c) The total fee for filing the first petition for special letters of administration without the powers of a general personal representative, the first petition for letters of guardianship or letters of conservatorship, a petition for compromise of a minor's claim, a petition pursuant to Section 13151 of the Probate Code, a petition pursuant to Section 13650 of the Probate Code, except as provided in Section



13652 of the Probate Code, or a petition to contest any will or codicil is one hundred eighty-five dollars (\$185).

(d) A fee of one hundred eighty-five dollars (\$185) shall also be charged for filing any subsequent petition of a type described in subdivision (a) or (c) in the same proceeding by a person other than the original petitioner. If a person is appointed on a subsequent petition and qualifies as administrator, executor, or special administrator with the powers of a general personal representative under subdivision (a), the successful personal representative shall reimburse the original petitioner in excess of one hundred eighty-five dollars (\$185), less any unpaid costs awarded to the successful petitioner against the original petitioner, under rules adopted by the Judicial Council. The reimbursement shall be an expense of administration in the estate.

(e) This section shall become inoperative on July 1, 2006, and, as of January 1, 2007, is repealed, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

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